

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MARILYN ROBINSON,

Plaintiff,

v.

Case No. 06-C-1238

BEVERLY ENTERPRISES, INC.,  
BEVERLY ENTERPRISES - WISCONSIN, INC.,  
BEVERLY HEALTH AND REHABILITATION  
SERVICES, INC.,  
COLONIAL MANOR,  
AEGIS THERAPIES, INC.,  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH,  
LUMBERMENS MUTUAL CASUALTY COMPANY,  
ALLIANZ INSURANCE COMPANY,  
ABC INSURANCE COMPANY,  
DEF INSURANCE COMPANY,  
STATE OF WISCONSIN, DEPT. OF HEALTH &  
FAMILY SERVICES,  
TOMMY THOMPSON, Secretary of the Department  
of Health and Human Services,  
BEVERLY INDEMNIFY, LTD.,  
AMERICAN HOME ASSURANCE COMPANY,  
XL INSURANCE (Bermuda) LTD,

Defendants.

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**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND, DENYING PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES, DENYING BEVERLY'S REQUEST FOR  
CERTIFICATION OF AN INTERLOCUTORY APPEAL, AND REMANDING THIS CASE  
TO THE MILWAUKEE COUNTY CIRCUIT COURT FOR FURTHER PROCEEDINGS**

On November 30, 2006, defendant, XL Insurance Ltd. (XL), removed this case from the Milwaukee County Circuit Court. On December 22, 2006, plaintiff, Marilyn Robinson, filed the motion to remand this case back to state court and a motion for attorneys' fees, which are pending before this court. On January 16, 2007, XL filed documents in opposition to plaintiff's motions.

This court held a hearing on these motions on Monday, July 16, 2007, at 6:00 p.m. Attorneys M. Angela Dentice and William C. Gleisner, III, appeared on behalf of the plaintiff. Attorneys William H. Levit, Jr., and Michael B. Satz appeared on behalf of XL. Attorney Robert Johnson appeared on behalf of the Beverly defendants and the insurance carriers. Assistant Attorney General Richard Victor appeared telephonically on behalf of the State of Wisconsin.

After arguments on the plaintiff's motion, the court stated its findings and concluded that this case should be remanded to the Milwaukee County Circuit Court. But, on July 18, and prior to entry of the remand order, "Additional Authority Submitted On Behalf Of XL Insurance (Burmuda) Ltd. In The Nature Of A Motion For Reconsideration Or In The Alternative For 28 U.S.C. §1292(b) Certification" was filed. Robinson's "Response To XL's Motion For Reconsideration" followed.

First, the court notes that XL does not set forth any grounds for relief under Fed. R. Civ. Pro. 59(a) or Fed. R. Civ. Pro. 60 (b). *U.S. v. Thieret*, 748 F. Supp. 603, 613 (N.D. Ill. 1990) (motions to reconsider, not specifically contemplated in the Federal Rules of Civil Procedure, are most frequently offered in an inappropriate way: by asking the court to revisit an issue that it has considered and dealt with thoroughly, but on which it has reached a conclusion adverse to the movant). Moreover, as the plaintiff asserts in her responsive brief, XL is attempting to circumvent 28 U.S.C. § 1447(d). This provision provides that "an order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

Therefore,

IT IS ORDERED that plaintiff's motion to remand is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for attorneys' fees is DENIED.

IT IS FURTHER ORDERED that Beverly's request for certification for an interlocutory appeal is DENIED.

IT IS FURTHER ORDERED that XL's submission entitled "Additional Authority Submitted On Behalf Of XL Insurance (Burmuda) Ltd. In The Nature Of A Motion For Reconsideration Or In The Alternative For 28 U.S.C. §1292(b) Certification" is DENIED.

IT IS FURTHER ORDERED that this case is REMANDED to the Milwaukee County Circuit Court for all further proceedings.

Dated at Milwaukee, Wisconsin, this 24th day of July, 2007.

BY THE COURT

s/ C. N. CLEVERT, JR.  
C. N. CLEVERT, JR.  
U. S. DISTRICT JUDGE